

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**SWIFT BEEF COMPANY<sup>1</sup>**

**Employer**

**and**

**Case 27-RC-226559**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 1, AFL-CIO<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union of Operating Engineers Local 1, AFL-CIO (Petitioner), pursuant to its amended petition, seeks to represent a unit of approximately twelve unrepresented employees employed by Swift Beef Company (Employer) in the supply group of the Employer's Greeley, Colorado facility.<sup>3</sup> The Petitioner seeks to represent approximately six supply clerks, four purchasing clerks, and two label makers in the supply group, excluding all other employees.

The Employer contends that the only appropriate unit should also include the three inventory walkers employed in the supply group who are currently represented by United Food and Commercial Workers, Local No. 7 (Local 7). Local 7, which is a Party-In-Interest to this proceeding, has no position as to the appropriateness of the petitioned-for unit because it does not claim an interest in the petitioned-for unit, as amended.<sup>4</sup> It maintains that the inventory walkers should not be included in the unit as the Employer contends because these employees are represented by Local 7 and are covered by its current collective-bargaining agreement with the Employer.

The parties stipulated that any unit found appropriate by the Regional Director should exclude managers, office clerical employees, professional employees, guards and supervisors

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<sup>1</sup> The Employer's name was amended at the hearing to reflect its correct name.

<sup>2</sup> It is undisputed that International Union of Operating Engineers Local 1 is affiliated with the AFL-CIO. Accordingly, the ballot in this matter shall reflect the full name of Petitioner, including its affiliation with the AFL-CIO.

<sup>3</sup> Petitioner was permitted to amend its petition, which initially sought "supply" employees, in order to clarify that it was seeking only the supply clerks, purchasing clerks, and label makers, and is not seeking the inventory walkers who are also listed on the attachment to the Employer's Statement of Position as being in the supply group. On December 9, 2016, in Case 27-RC-187991, the Petitioner was certified as the bargaining representative of the Employer's fabrication technicians, Alvy maintenance technicians, and fault reseters, excluding all other employees.

<sup>4</sup> Local 7's motion to intervene was granted as a representative of employees in a related unit as set forth in Section 11023.5 of the Casehandling Manual, Part Two, Representation Proceedings. Local 7 maintains that it does not wish to appear on the ballot if an election is directed in the petitioned-for unit.

under the Act, and all other employees. Thus, the only issue is whether the inventory walkers must be included in the petitioned-for unit.<sup>5</sup>

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions during the hearing. As explained below, based on the record and relevant Board law, I conclude that the petitioned-for unit constitutes an appropriate residual unit and, therefore, shall direct an election in the petitioned-for unit, as amended.

### **THE EMPLOYER'S OPERATIONS**

The Employer, a Delaware corporation, is engaged in the business of processing meat at its Greeley facility. The Employer's production floor is responsible for the harvesting and fabrication of cattle (beef) for human consumption. There are approximately 3,500 employees working on the production floor.<sup>6</sup> The production employees are presently represented by Local 7 under a collective-bargaining agreement, effective by its terms from July 22, 2014 to July 21, 2019. The three inventory walkers involved in this matter are currently represented by Local 7 and are in the same unit as the production employees.<sup>7</sup> The record does not disclose how long Local 7 has represented production employees and the inventory walkers.

The Employer's supply group provides supplies and management support to the production floor. In doing so, the supply group issues purchase orders, receives and houses materials, maintains and controls inventory, and supplies the production floor with packaging materials and other supplies necessary for the operation of the production floor. The supply group also stores and supplies the production floor with parts and tools necessary for the maintenance of machinery on the production floor from a downstairs warehouse. The supply group includes the twelve petitioned-for employees,<sup>8</sup> the three represented inventory walkers, and two immediate supervisors.<sup>9</sup> The supply group is managed by a Purchasing/Supply Manager (Supply Manager). The Supply Manager reports to the Controller. The supply group is located in the same building as the production area. The supply group occupies a two-story warehouse near the production area, with separate supply warehouses located upstairs and downstairs. The warehouses are connected by stairs.

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<sup>5</sup> The Employer argued at the hearing and indicates in its Statement of Position (under Section 5 relating to any bars to conducting an election), that the Region should defer processing of the petition to the AFL-CIO procedures for handling representation disputes, under either Articles XX or Article XXI. I did not permit litigation of this issue. In that regard, the issue is not amenable to litigation, and abeyance under these AFL-CIO programs is not appropriate in this matter where the Petitioner and Local 7 are not seeking to represent the same employees. Accordingly, there is no dispute for that body to resolve, and the unit determination will be resolved by this proceeding.

<sup>6</sup> The terms "production floor" and "fabrication floor" were used interchangeably throughout the record. Similarly, the terms "production employees" and "fabrication employees" were used interchangeably.

<sup>7</sup> The collective bargaining agreement with Local 7 includes "...all production employees, including janitors, fabrication knife sharpeners, kill floor knife room technician, scale (weight range), grounds crew, inventory, hide plant, manifestors, and production trainers employed by the Company at its Greeley, Colorado beef plant,..."

<sup>8</sup> At the time of the hearing, there was a job vacancy for the B-shift supply clerk position.

<sup>9</sup> The parties stipulated that the two supervisors are statutory supervisors of the Employer under Section 2(11) of the Act based on their authority and exercise of the authority to effectively recommend the assignment of work.

The inventory walkers had previously reported to the Production Manager, who was under the plant's General Manager. However, about a year and half ago, the Employer moved the inventory walkers from under the supervision of the Production Manager to the supervision of the Purchasing/Supply Manager.<sup>10</sup>

The three inventory walkers and the label makers primarily work in the upstairs warehouse and are supervised by the same supervisor. The upstairs warehouse is caged, secured by a locked door, and key access is limited to supply group employees only. The Employer's packaging materials (e.g., boxes, cardboard, glue, labels, etc.) are stored in the upstairs warehouse. Non-supply group employees have access to the upstairs warehouse with the direct supervision of a supply group employee. The downstairs warehouse, where the supply clerks and purchasing clerks primarily work under the supervision of a different supervisor, is an enclosed area, secured by a coded lock, and access to the key code is similarly limited to all supply group employees. The downstairs warehouse contains the parts and tools for machinery that is in the production area. The supply group also has large trailers located outside the building, which are used to store extra and special packaging materials.

Both warehouses' workstations are similar in that there are desks, computers and label machines for use by the supply group employees. Both supervisors hold weekly meetings with their respective employees to review any safety issues and policies and procedures. All supply group employees, except for one label maker, are certified to operate a forklift, although the record does not reveal how often such equipment is used.

Each job classification in the supply group has a distinct function. The inventory walker's job functions include, among others: inspecting packaging materials to ensure compliance with company quality specifications; keeping a record of materials taken by production employees; counting packaging materials to ensure accurate inventory; stocking and rotating materials; inventory control; maintaining conditions compliant with the company's standards of cleanliness; working with production to unload trailers of packaging materials; printing and inserting labels, when needed; and changing the forklift battery.

The label maker's job functions include, among others: preparing label inserts for certain exports; printing special program label requirements; filling label racks according to production requirements; assisting with label location on racks; maintaining clean working areas compliant with the company's standards; assisting quality assurance on label testing; counting inventory; providing shipping with export required labels; and reducing trim waste across the fabrication floor.

The purchasing clerk's job functions include, among others: assuring that all trailers from vendors have arrived and that emptied trailers have been taken; updating the trailer list; counting all packaging supplies in fabrication; counting all boxes and packaging supplies in offal;

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<sup>10</sup> The Supply Manager testified (although she was not employed at the time) that she understood the reporting structure was changed so that all supply group employees would report to the same manager since they all provided supplies to the fabrication operation.

counting all boxes in the box shop; sending the supervisor a full count of inventory on a weekly basis; creating purchase requisitions for boxes, bags, emergency orders, etc.; and receiving purchase orders for boxes, bags, and other orders received in supply from vendors.

The supply clerk's job functions include, among others: helping mechanics and production employees at the window with stock release tickets; checking vendor orders for accuracy; stocking delivered materials and special orders; checking stock for accuracy; maintaining a clean and organized work area compliant with the company's standards; unloading chemical deliveries and checking for accuracy; securing, organizing and distributing chemicals to departments; tracking work orders and parts that have issued; tracking inventory; lifting over 50 lbs; contacting other departments for work orders and when special orders arrive; securing the warehouse; tracking budgets for departments; tracking shipments coming in to and leaving out of supply; receiving purchase orders; maintaining carts, tools, and equipment in supply; printing labels and organizing new items; rotating stock; and issuing parts with work orders.

There is some degree of functional integration and daily interaction between the represented inventory walkers, production employees and the unrepresented supply group. For instance, the packaging materials and other supplies are received by the supply group in the downstairs supply warehouse, where the purchase clerks and supply clerks work. The inventory walkers and label makers retrieve the packaging materials from the downstairs supply warehouse and take them to the upstairs supply warehouse, where they store them and issue them to production employees. Production employees provide the inventory walkers with a "make" sheet, listing the materials and supplies that they need for the day. The inventory walkers issue the requested materials and supplies, keeping track of the inventory that issued, and they, in turn, provide this record to the purchasing clerks so that they check inventory and issue purchasing requisitions to maintain adequate inventory.

The Employer requires no specific training, skills, educational requirements or certification for any of the non-supervisory positions in the supply group. These positions are entry-level and all employees receive on-the-job training. All supply group employees are cross-trained to perform the job functions within the supply group for the purposes of filling in for another supply group employee when an employee is out or on vacation.<sup>11</sup> There is no record evidence that an inventory walker was permanently transferred to another position in the petitioned-for unit. However, there is limited record evidence that at an unspecified time a supply clerk permanently transferred to a label maker position, where that employee is currently employed.

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<sup>11</sup> The limited record evidence demonstrates that in one recent occasion, a label maker filled in for a supply clerk position for a shift, and in another occasion for an unspecified two-week period. Also, unidentified inventory walkers, label makers and purchasing clerks filled in for the upstairs supervisor in his absence. The record shows that the A-shift purchasing clerk has been trained to perform the job functions of an inventory walker and has done so, although the record does not reflect how many times this has occurred. Moreover, the record demonstrates that two supply employees have been trained to perform inventory walker functions; however, they have not been called to fill in for an inventory walker. Finally, the record demonstrates that the inventory walkers are trained to perform the label maker's job functions and that at least two inventory walkers filled in for a label maker sometime in January and February 2018. The record evidence does not establish on how many shifts this occurred, however.

As to schedules, the three inventory walkers work Monday through Friday as do the two label makers, four purchasing clerks, and one supply clerk. Although the other five supply clerks do not work the same days as the inventory walkers, their shifts overlap with that inventory walkers on four out of the five days in the workweek.

### ANALYSIS

Based on the record, I find that the petitioned-for unit is appropriate as a residual unit of supply group employees. In that regard, the amended petition seeks all of the unrepresented employees in the supply group. *Eastern Container Corp.*, 275 NLRB 1537, 1538 (1985). While there is a community of interest between the inventory walkers and the petitioned-for employees, the inventory walkers may not be removed from their existing unit through this petition without consent of their current bargaining representative, Local 7. It is undisputed that the Employer and Local 7 have a current collective-bargaining agreement covering the inventory walkers, and Local 7 has expressly refused to alter its bargaining unit as the Employer now proposes. As it is undisputed that the inventory walkers are represented under the Local 7 contract, in these circumstances, the parties to that contract may not seek to disturb that unit. There is no authority to suggest that the filing of a petition by another labor organization seeking to represent a residual unit would afford a party to a collective bargaining agreement a basis for unilaterally challenging the current represented bargaining unit.

The Employer has not presented any authority to establish that an Employer may seek to remove a portion of an existing bargaining unit during the term of a contract and place it in another bargaining unit so they might vote on whether they wish to be represented by another labor organization. The Employer cites a number of cases in support of its position that the Board does not have to defer to prior unit determinations or stipulations concerning bargaining units.<sup>12</sup> This principle, however, does not support a finding that the Board would disturb an existing bargaining unit in these circumstances. Nor does the Board's decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), cited by the Employer, require a different result. *PCC Structural*, while providing the framework for community of interest analysis, did not overrule existing law concerning residual units. Although the Employer maintains that not including the inventory walkers in the petitioned-for unit creates a "fractured" unit, those employees continued to be part of the production unit, apart from the supply group employees, even after supervision of the inventory walkers was transferred to the Supply Manager about a year and a half ago.

Further, it is not necessary to establish that the supply clerks, purchasing clerks, and label makers share a distinct community of interest from the three inventory walkers. In these circumstances, where the parties have agreed that all other employees are excluded, and where

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<sup>12</sup> The Employer cites *Pacific States Steel Corp.*, 113 NLRB 222 (1955), *Baltimore Transit Co.*, 92 NLRB 688 (1950), and *Elastic Stop Nut Corp. of Am.*, 87 NLRB 1532 (1949), to support its argument that the Region should not defer to the existing bargaining unit. *Elastic Stop Nut* and *Baltimore Transit* involved incumbent unions seeking to add employees to an existing unit. *Pacific States* involves competing claims by two unions seeking to represent three job classifications.

the supply clerks, purchasing clerks, and label makers are the only remaining unrepresented employees in the supply group, it is not necessary to determine whether those unrepresented employees have a community of interest distinct from the inventory walkers or any other employees. See *Eastern Container Corp.*, Id. at 1538 (residual unit of maintenance employees appropriate without showing of separate community of interest where all other employees were excluded and incumbent union representing the production unit did not seek to represent maintenance employees).

I find that the Employer's contention that the petition is based upon the extent of organization lacks merit. Section 9(c)(5) precludes the Board from giving controlling weight to extent of organization and, based on the foregoing, I have not given controlling weight to the extent of organization in finding the petitioned-for unit appropriate as a residual unit to the production unit. *Mosler Safe*, 188 NLRB 650, 651 n. 6 (1971)(dismissing a similar argument). Rather, the determination is based on the residual unit presented in this case.

### **Conclusion**

Since I have determined that the unit sought by Petitioner is appropriate, I shall direct an election among the employees in the petitioned-for unit.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>13</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time supply clerks, purchasing clerks, and label makers employed by the Employer at its facility located in Greeley, Colorado; but excluding all other employees, office clerical employees, professional

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<sup>13</sup> The Employer is a Delaware corporation with an office and principal place of business located in Greeley, Colorado, where it is engaged in the business of meat processing. Within the past twelve months, a representative period, the Employer sold goods valued in excess of \$50,000 directly to customers located outside the state of Colorado.

employees, managerial employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers Local 1, AFL-CIO.

#### **A. Election Details**

The election will be held on Thursday, October 11, 2018, from 6:00 a.m. to 7:00 a.m. and 2:00 p.m. to 3:00 p.m. at the main conference room adjacent to the cafeteria at the Employer's facility located at 800 N. 8<sup>th</sup> Ave., Greeley, Colorado.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending Friday, September 14, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, September 25, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.



### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 21, 2018

*/s/ Paula Sawyer*

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